In the High Court of Judicature at Madras

Dated: 01/11/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ
and
The Honourable Mr.Justice M.THANIKACHALAM

Writ Appeal No.105 of 2002

R.Vijayalakshmi ... Appellant

-Vs-

1. P.P.R.Hariharan
9, Red Hills Road
Villiwakkam
Madras 600 049

2. The Tahsildar
Peambur-Purasalwakkam
Sembiam
Madras 600 012

3. The District Collector
Madras District
Madras 600 005

4. The Commissioner
Corporation of Madras
Madras 600 003

5. The Inspector of Police (L&O)
Villiwakkam Police Station
Madras 600 049

6. The Junior Engineer
Tamil Nadu Electricity Board
63, Villiwakkam
Madras 600 049. ... Respondents

Appeal under Clause 15 of the Letters Patent against the order dated 17.08.2001 made in W.P.No.5940 of 1995.
!For appellant : Mr.V.Raghavachari

^For respondents : Mr.A.Shanmugham .. For R1

Mr.V.Subbarayan
Spl.G.P. .. For R2,3 & 5
Mr.K.A.Raveendran For R4
Mr.G.Vasudevan .. For R6

:J U D G M E N T

(Judgment of the Court was delivered by
V.KANAGARAJ.,J.)

The above writ appeal has been preferred against the Order dated 17 .08.2001 made in Writ Petition No.5940 of 1995 by the learned Single Judge of this Court thereby an application filed by the petitioner individual, praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to take necessary action under the provisions of the Tamil Nadu Land Encroachment Act (III of 1905) to clear the encroachments and to remove the huts over an extent of about 3000 sq.ft. Of poromboke land stretching from East to West to an extent of 160 feet in length situate between the Villiwakkam Red Hills Road at Northern side and the petitioner residential house in No.9, Red Hills Road, Villiwakkam, Madras.49 and the passage at the southern side and the learned Single Judge on the above writ petition has been ordered directing the respondents to remove the unauthorised encroachers within eight weeks from the date of receipt of production of the copy of the order.

2. Aggrieved, the third party-appellant on leave by this Court, has come forward to prefer the above appeal on grounds such as, that the learned Single Judge should have seen that the writ petition is abuse of process of law and the writ petitioner had mischievously failed to implead the proper and necessary party to the proceeding; that the learned Judge should have appreciated that the occupation of the appellant is anterior to that of the writ petitioner and she had put up a pucca structure and had the building assessed; that the learned Judge should have directed the first respondent to disclose the nature of his right to the property; that the first respondent is an interlopper and has no right to the property that he is holding; that further, he had encroached upon the 'eri channel' and that the first respondent has no right to accuse the occupants of S.No.344 as encroachers; that the first respondent had pleaded a false case as if the public is affected by the construction of the property by the petitioner; that the claim of the first respondent is fraudulent and mischievous; that there exists a 40 feet road and the appellant's property is assigned Door No.12, South Red Hills Road, and this property had been constructed by her father and the assessment was also made by the Corporation of Madras as early as in 1 957; that the respondents 2 to 5 are attempting to remove the structure put up by Jayarama Reddy, the father of the appellant and inherited by the appellant on his death; that the respondents 2 to 6 have issued a notice on 25.09.2001 and served on the appellant on 09.11.2001, calling upon the appellant to remove the alleged encroachment; that the appellant has perfected her title, and right, and the respondents 2 to 6 cannot seek to have the construction removed particularly, themselves having assessed to the property; that the proceedings of the respondents is against the ruling reported in 2001 All India High Court Cases 1921; on such grounds, the appellant would ultimately pray to set aside

the order of the learned Single Judge made in Writ Petition No.5940 of 1995 dated 17.08.2001, as illegal, incumbent, irregular and without jurisdiction.

3. Today when the above writ appeal was taken up for consideration before this Court, the learned counsel appearing on behalf of the appellant would submit that the judgment of the Hon'ble Apex Court delivered in Government of Andhra Pradesh v. Thummala Krishna Rao and another (AIR 1982 SUPREME COURT, 1081) wherein the learned counsel appearing for the appellant would point out the following passage.
"If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by S.6 for evicting the person who is in possession of the property under a bona fide claim or title."

4. On the part of the writ petitioner before the learned Single Judge who is the first respondent in the above writ appeal, the learned counsel appearing on his behalf would submit that the first respondent has got his own interest nearby the property which is under encroachment and moreover since being a public road, the encroachments drastically affect the easy access for men and vehicle to pass through, besides creating pollution by causing the effluents allowed to flow nearby his genuine occupation and therefore, he would urge this Court to confirm the order of the learned Single Judge directing to evict the encroachers in a time bound manner.

5. The learned Special Government Pleader appearing on behalf of the Governmental authorities who are the rest of the respondents in the above appeal, that is respondents 2, 3 and 5, would also submit that the order of the learned Single Judge is the warranting one in the situation of the case without which it is very difficult to maintain a common and communal facilities such as, the road and therefore, in full consideration of the hindrance that is caused not only to the individuals like the petitioner, but also to the general public, the learned Single Judge has passed this order and would urge the Court to confirm the same dismissing the above writ appeal.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel appearing for the appellant, the first respondent and the Special Government Pleader for respondents 2, 3 and 5, and the learned counsel appearing for respondents 4 and 6, what comes to be known is that the above writ petition has been filed seeking to evict the encroachments indicted by the writ petitioner in the above writ petition. Though on the part of the petitioner in the above writ petition, he would cite the representation made on his part to the authorities particularly, to the Madras Corporation, the Assistant Engineer, Highways concerned with the Corporation and such other authorities, since no proper action was initiated to evict the encroachers, left with no choice has come to the Court seeking the remedy as sought for in the writ petition.

7. Though the intention of the writ petitioner in the above writ petition is laudable, still the petitioner has not brought-forth in

detail and with proof as to how by the said encroachments the petitioner is affected since it is the public convenience on the main road leading from Red Hills Road to an extent of about 3000 sq.ft. Of poromboke land stretching from East to West to an extent of 160 feet in length situate between the Villiwakkam Red Hills Road at Northern side and the writ petitioner's residential house in No.9, Red Hills Road, Villiwakkam, Madras.49 and the passage at the southern side of the property is the subject matter, wherein the encroachers are to be evicted and therefore needless to mention that the petitioner's personal properties are not at all involved so far as the eviction sought to be carried out is concerned.

8. But the petition would very well sound a public interest litigation and from the very wording of the petitioner and the prayer sought to be made, it could easily be analysed that it is a sort of public interest litigation and in such event it cannot lie before the learned Single Judge of this Court and therefore, even regarding the maintainability, there is no ground for the writ petition to have been entertained.

9. Secondly, though eviction is sought for to be made who are to be evicted, it has not been made clear in the writ petition nor those who are sought to be evicted have been impleaded as necessary parties to the writ proceeding particularly, in view of the fact that those who are going to be affected by the orders sought to be passed, have to be made parties so as to give an opportunity for them to be heard since being the cardinal principles of t he natural justice.

10. Absolutely, no one of the so-called encroachers has been brought on record as a necessary party to the proceedings. But the order of the learned Single Judge directing the authorities to carry out the eviction issued are sure to affect the so-called encroachers, among whom, there may be genuine parties and the vital interest in the property held by them or their properties may not even come under the purview of encroachment but, still under the pretext of the order they are also likely to be evicted and therefore, without identifying as to who are the encroachers and without bringing them on record, a blunt order cannot be passed in the name of eviction of the encroachers and, therefore, this writ appeal has to be decided on such parameters, particularly on the ground of maintainability which in the considered opinion of this Court, the writ petition could not have been entertained since the petitioner, strictly speaking, is not personally affected by the encroachment sought to be evicted but may be with the hidden desire to increase the value of his property which is some of the way from the encroached portion, the petitioner might have come forward to file the application and that cannot be presumed prior to the entertaining such application pertaining to the prayer of the writ petition.

11. The wordings, the objects sought to be achieved in the writ petition, particularly fixing the attention on the subject matter and the eviction sought to be made would all sound very much that the subject designed by the petitioner is one of public interest matters and if at all it could be made to the proper forum as a public interest litigation in which event the

writ petition could not lie before a learned Single Judge.

12. Further, the encroachers who are sought to be evicted are not identified nor made necessary parties to the proceedings and therefore, no blunt orders could be made particularly regarding the eviction of the certain permanent structures since the innocents also are susceptible to suffer and therefore, it is only desirable on the part of the petitioner to name out the encroachers, identifying them and their properties which could be considered having constructed in the encroached area and making them as respondents to the writ petition. Thus making out a writ petition in the full form and in the required order and therefore, on all these reasons, this Court is not in a position either to accept the maintainability of the writ petition before the learned Single Judge or even to confirm the order passed therein, directing the authorities to evict the encroachers within eight weeks as it has been ordered by the learned Single Judge and therefore, this Court is of the firm view that the above writ appeal has to be allowed but at the same time with liberty to the writ petitioner, the first respondent herein to agitate his rights, if any, or in the manner of a public interest litigation fulfilling the requirements therein and resorting to the proper forum and hence the following Judgment:

In result,

(i) for all the reasons assigned, the above writ appeal succeeds and the same is allowed;

(ii) the Order dated 17.08.2001 made in W.P.No.5940 of 1995 by the learned Single Judge of this Court is set aside;

(iii) However, the writ petitioner/first respondent will be at liberty to agitate his right in the proper manner and before the proper forum and in such a way as it has been directed supra.
No costs.

Index : Yes
Internet: Yes

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To
1) The Tahsildar
Peambur-Purasalwakkam
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